



Dava Kaitala  
General Attorney

BNSF Railway Company  
P O. Box 961039  
Fort Worth, TX 76161-0039  
2500 Lou Menk Drive  
Fort Worth, TX 76131-2828  
817-352-2377 Direct  
817-352-0211 Fax  
Dava.kaitala@bnsf.com

May 4, 2009

Kevin Larson  
Superfund Division, Emergency Response and Removal North Branch  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Re: Beatrice Gas and Power Company  
Former Manufactured Gas Plant Site  
Beatrice, Gage County, Nebraska

40332421



Dear Mr. Larson:

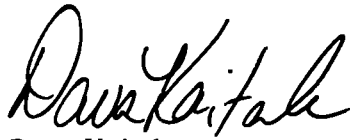
This letter is in response to the Notice of Potential Liability, dated December 18, 2008, received by BNSF Railway ("BNSF") on December 22, 2008, signed by Ms. Celia Tapia, for the Former Manufactured Gas Plant Site at Beatrice, Gage County, Nebraska. This letter requests from BNSF a response indicating whether BNSF is willing to participate in the current response action at the site and whether BNSF Railway is willing "to negotiate a resolution of its liabilities in connection with the response." It is also in response to Ms. Barbara Peterson's letter of February 17, 2009, requesting that BNSF contact the PRPs for the site to discuss BNSF's potential liability. I responded to Ms. Peterson's letter and several telephone conversations with her by making a Freedom of Information Act request for all documents related to PRPs for the site.

Your office responded to my FOIA request by providing two discs of information containing 28 electronic files. These 28 files contained 2,277 pages worth of material related to EPA's evidence of the PRPs for the site at Beatrice, Nebraska. In all 2,277 pages, there was nothing that indicated BNSF or any of its predecessors had any involvement whatsoever with the site or any activities at the site. In fact, the only mentions of railroads at all are the presence of railroad tracks outside of the site but in the general vicinity of the site. The only other mention of railroads, not contained in the documents on the two compact discs but instead contained in the letter dated December 22, 2008, is that the railroad owned or owns property adjacent to the site. I have carefully reviewed the law, and there is nothing that indicates that owning land near a CERCLA or RCRA site makes one responsible for the cleanup or for EPA's costs for actions related to the cleanup. In fact, Subsection 221 of the Small Business Relief and Brownfields Revitalization Act specifically excludes from the definition of a liable party contiguous landowners.

Because it appears BNSF has no liability for the site at Beatrice, Nebraska, we will not be contacting the PRPs for the site and will not be signing as a party to the Consent Order. It is our position that EPA's determination that the PRPs are Centel Corporation, as the former owners and operators, and the City of Beatrice, as the current owners, is correct. We see no evidence that would support a finding from EPA that BNSF is, under any conceivable argument, responsible for the contamination or cleanup at the site.

It appears from my conversations with Ms. Peterson that the actual issue is that the PRPs have to this point been unwilling to sign an access agreement with BNSF to enter BNSF property to complete their investigation. We remain committed to reaching an agreement with the PRPs to allow them site access.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Dava Kaitala". The signature is fluid and cursive, with the first name "Dava" and last name "Kaitala" clearly distinguishable.

Dava Kaitala  
General Attorney